

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

KENNETH B. HAGGINS,)	
)	
Petitioner,)	
)	
v.)	Case No. CV412-093
)	
AL ST. LAWRENCE,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Currently being prosecuted in state court for, *inter alia*, felony murder, *see* attached docket print-out, Kenneth B. Haggins petitions this court for habeas relief under 28 U.S.C. § 2241. Doc. 1.¹ He also moves for leave to proceed *in forma pauperis* (IFP) which, in light of his indigency, the Court **GRANTS**. Doc. 2. Haggins raises issues like the lack of probable cause to arrest him, the fact that no one believes his self-defense explanation, etcetera. He thus asks this Court to enjoin the state's prosecution. *Id.* at 9.

¹ Haggins is a repeat customer. *Haggins v. Young*, CV411-209 doc. 39 at 1 (S.D.Ga. filed Feb. 28, 2012) (describing his 42 U.S.C. § 1983 case brought to "jam-up" the same state criminal prosecution), *adopted*, doc. 45 (S.D. Ga. Apr. 4, 2012).

Haggins' § 2241 petition must be dismissed for lack of exhaustion.²

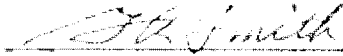
It is not enough to have pursued *pretrial* state court remedies, as Haggins apparently seeks to demonstrate here. Doc. 1 at 12. Instead, he must pursue post-trial state court remedies, too. *See supra* n. 2. For that matter, the state court judge has scheduled a September 12, 2012 jury trial for him. *See attach.* at 1. If convicted, he may present all of the claims raised here on his direct and collateral appeals there. *Garcon v. Palm Beach Cnty. Sheriff's Office*, 291 F. App'x 225, 226 (11th Cir. 2008) (such claims must be "properly brought during [the] criminal case and

² While the § 2241 statute does not contain an exhaustion requirement resembling that found in 28 U.S.C. § 2254, courts have adopted such a requirement for § 2241 petitions. *Thomas v. Crosby*, 371 F.3d 782, 812 (11th Cir. 2004) ("Among the most fundamental common law requirements of § 2241 is that petitioners must first exhaust their state court remedies.") (Tjoflat, concurring); *Montez v. McKinna*, 208 F.3d 862, 866 (10th Cir. 2000) ("A habeas petitioner is generally required to exhaust state remedies whether his action is brought under § 2241 or § 2254."). "[T]he [common law exhaustion] requirement was codified in 28 U.S.C. §2254(b), but the requirement applies to all habeas corpus actions." *Fain v. Duff*, 488 F.2d 218, 223 (5th Cir. 1974); *Moore v. DeYoung*, 515 F.2d 437, 442 (3d Cir. 1975) (finding that under principles of federalism, exhaustion is required before pretrial writ can be issued); *see Wilson v. Hickman*, 85 F. Supp. 2d 1378, 1380 (N.D. Ga. 2000).

A § 2241 petitioner, then, "must exhaust his state remedies by petitioning the highest court in the state in which he is being held 'when such review is part of the ordinary appellate review procedure' in that jurisdiction." *Jackson v. Walker*, 206 F. App'x 967, 968 (11th Cir. 2006) (quoting *Pope v. Rich*, 358 F.3d 852, 853 (11th Cir. 2004)). And "[b]ecause ordinary appellate procedure in Georgia authorizes habeas review in the Georgia Supreme Court, a petitioner must avail himself of that procedure before we will deem all state remedies to be exhausted." *Id.*

subsequent direct appeal, should [the § 2241 petitioner] choose to file one.”); *Bure v. McNeil*, 2010 WL 717582 at *2 (S.D. Fla. Feb. 26, 2010). Afterwards, he may timely petition this Court under 28 U.S.C. § 2254. Accordingly, his § 2241 petition should be **DISMISSED** without prejudice so that he may exhaust his state remedies.

SO REPORTED AND RECOMMENDED this 11th day of April, 2012.



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA



CHATHAM COUNTY, GA

Eastern Judicial Circuit of Georgia

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April 09, 2012

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Case Details

State
VS.
HAGGINS, KENNETH

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Case Information

Court: Superior
Case Number: CR102560
Case Type: MURDER
Judge: JUDGE WALMSLEY
Assistant District Attorney: ARVO HENIFIN
Date Filed: 11/3/2010
Status: ACTIVE -
Next Event: 5/7/2012 MOTION HEARING (MTH)

Defendant Information

Name: HAGGINS, KENNETH
DIN: X0144327
Gender: MALE
Race: AFRICAN AMERICAN
Height: 67
Weight: 150
Eyes: BROWN
Hair: BLACK



Click for large Picture

[Defendant History](#)

Attorney Information

WILLIAM S LEWIS
 540 EAST OGLETHORPE AVE
 SAVANNAH, GA
 31401

Bondsman Information

N/A

Case Events

Date	Time	Code	Judge	Action
9/10/2012	09:30AM	JURY TRIAL	WALMSLEY	RESCHEDULE EVENT
9/4/2012	10:00AM	STATUS CONFERENCE HEARING	WALMSLEY	RESCHEDULE EVENT
7/30/2012	09:30AM	JURY TRIAL	WALMSLEY	
7/16/2012	10:00AM	STATUS CONFERENCE HEARING	WALMSLEY	
5/7/2012	3:00PM	MOTION HEARING (MTH)	WALMSLEY	
4/30/2012	09:30AM	JURY TRIAL	PERRY BRANNEN, JR.	RESCHEDULE EVENT
4/23/2012	10:00AM	STATUS CONFERENCE HEARING	WALMSLEY	CANCELLED EVENT - CL
3/26/2012	3:00PM	MOTION HEARING (MTH)	PERRY BRANNEN, JR.	
2/13/2012	3:00PM	MOTION HEARING (MTH)	PERRY BRANNEN, JR.	RESCHEDULE EVENT
2/13/2012	09:30AM	JURY TRIAL	PERRY BRANNEN, JR.	
11/14/2011	09:30AM	JURY TRIAL	PERRY BRANNEN, JR.	RESCHEDULE EVENT
11/14/2011	3:00PM	MOTION HEARING (MTH)	PERRY BRANNEN, JR.	RESCHEDULE EVENT
9/26/2011	3:00PM	MOTION HEARING (MTH)	PERRY BRANNEN, JR.	RESCHEDULE EVENT
9/26/2011	09:30AM	JURY TRIAL	PERRY BRANNEN, JR.	RESCHEDULE EVENT
7/5/2011	09:30AM	JURY TRIAL	PERRY BRANNEN, JR.	RESCHEDULE EVENT
5/16/2011	09:30AM	JURY TRIAL	PERRY BRANNEN, JR.	RESCHEDULE EVENT
2/22/2011	12:00PM	PRETRIAL HEARING	PERRY BRANNEN, JR.	
1/3/2011	12:00PM	PRETRIAL HEARING	PERRY BRANNEN, JR.	RESCHEDULE EVENT
12/6/2010	10:00AM	CALENDAR CALL	PERRY BRANNEN, JR.	

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Charges

Charge	Description	Counts	Severity	Charge Date	Disposition
16-5-1(C)	FELONY MURDER	1	FELONY	11/3/2010	
16-5-21	AGGRAVATED ASSAULT	1	FELONY	11/3/2010	
16-7-23	CRIMINAL DAMAGE TO PROPERTY 2ND DEGREE	1	FELONY	11/3/2010	
16-11-106	POSS FIREARM/KNIFE IN COMMITTING CRIME	1	FELONY	11/3/2010	
16-11-126	CARRYING A CONCEALED WEAPON	1	FELONY	11/3/2010	
16-5-1(A)	MALICE MURDER	1	FELONY	11/3/2010	
16-11-106	POSS FIREARM/KNIFE IN COMMITTING CRIME	1	FELONY	11/3/2010	

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Proceedings

9/10/2012	09:30AM	JURY TRIAL	RESCHEDULE EVENT	WALMSLEY	
9/4/2012	10:00AM	STATUS CONFERENCE HEARING	RESCHEDULE EVENT	WALMSLEY	
7/30/2012	09:30AM	JURY TRIAL		WALMSLEY	
7/16/2012	10:00AM	STATUS CONFERENCE HEARING		WALMSLEY	
5/7/2012	3:00PM	MOTION HEARING (MTH)		WALMSLEY	
4/30/2012	09:30AM	JURY TRIAL	RESCHEDULE EVENT	PERRY BRANNEN, JR.	
4/23/2012	10:00AM	STATUS CONFERENCE HEARING	CANCELLED EVENT - CL	WALMSLEY	
3/29/2012		ORDER			ORDER ON DEFS PRO SE MOTION TO QUASH AND DISMISS INDICTMENT STRICKEN/
3/28/2012		PRETRIAL SCHEDULING ORDER			
3/27/2012		SCHEDULING ORDER			
3/26/2012	3:00PM	MOTION HEARING (MTH)		PERRY BRANNEN, JR.	
3/13/2012		PRO SE LETTER RECEIVED			AND MEMO/CC SA/
3/13/2012		MASTER LIST FOR WITNESSES			
3/2/2012		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			DEMAND FOR PRODUCTION OF DOCUMENTS/
3/2/2012		MOTION - PRO SE MOTION	STRICKEN		MOTION TO QUASH AND DISMISS INDICTMENT/CLERK CC SA/
2/22/2012		PRO SE LETTER RECEIVED	MOTION WITHDRAWN		LETTER INFORMING COURT THAT WILL NO LONGER BE REPRESENTED BY PUBLIC DEFENDERS OFFICE/
2/13/2012	3:00PM	MOTION HEARING (MTH)	RESCHEDULE EVENT	PERRY BRANNEN, JR.	
2/13/2012	09:30AM	JURY TRIAL		PERRY BRANNEN, JR.	
2/2/2012		MASTER LIST FOR WITNESSES			
11/29/2011		ORDER			ORDER DENYING MOTION FOR PROCEEDING AS AN INDIVIDUAL PERSON/
11/14/2011	09:30AM	JURY TRIAL	RESCHEDULE EVENT	PERRY BRANNEN, JR.	
11/14/2011	3:00PM	MOTION HEARING (MTH)	RESCHEDULE EVENT	PERRY BRANNEN, JR.	
11/7/2011		MASTER LIST FOR WITNESSES			
10/21/2011		ORDER			ORDER DENYING NOTICE OF DEF/
10/18/2011		ENTRY OF APPEARANCE			WILLIAM S LEWIS/

10/17/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
10/17/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			NOTICE OF INTENTION OF DEFENSE/DECLARATION BY DEF/
10/17/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
10/17/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
9/26/2011		ORDER			CASE CONTINUED/
9/26/2011	3:00PM	MOTION HEARING (MTH)	RESCHEDULE EVENT	PERRY BRANNEN, JR.	
9/26/2011	09:30AM	JURY TRIAL	RESCHEDULE EVENT	PERRY BRANNEN, JR.	
9/21/2011		NOTICE			FILED BY DEF/
9/16/2011		SUBPOENA DUCES TECUM			DET S YOUNG/
9/14/2011		MOTION - JACKSON DENNO			AMENDED MOTION TO SUPPRESS AND EXCLUDE ALL STATEMENTS OF DEF ADN DEMANDF OR JACKSON DENNO HEARING/
9/14/2011		MOTION - TO DISMISS			AMENDED MOTION TO DISMISS DUE TO DESTRUCTION OF MATERIAL AND EXCULPATORY EVIDENCE/
9/14/2011		MOTION - JACKSON DENNO			AMENDED MOTION TO SUPPRESS/
9/14/2011		SUBPOENA DUCES TECUM			TO DET S YOUNG/
9/13/2011		MASTER LIST FOR WITNESSES			
9/13/2011		PETITION FOR BOND/NISI			LOWRY/
9/8/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
9/8/2011		NOTICE			FILED BY DEF REPRESENTED BY LOWRY/
9/8/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
9/7/2011		MASTER LIST FOR WITNESSES			
8/29/2011		PRO SE LETTER RECEIVED			REQUESTING TRANSCRIPTS-NAN NOTED NO TRANSCRIPTS IN FILE/
8/23/2011		MOTION - TO DISMISS			MOTION TO DISMISS DUE TO DESTRUCTION OF MATERIAL AND EXCULPATORY EVIDENCE/
8/17/2011		PRO SE LETTER RECEIVED			REQUESTING TRANSCRIPTS-FORWARD TO NAN/
8/15/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
8/10/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
7/29/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
7/6/2011		ENTRY OF APPEARANCE			LOWRY/
7/5/2011	09:30AM	JURY TRIAL	RESCHEDULE EVENT	PERRY BRANNEN, JR.	
7/5/2011		ORDER			CASE CONTINUED/
6/28/2011		MEMORANDUM			MEMO FROM JUDGE IN RESPONSE TO PRO SE LETTER/
6/27/2011		PRO SE LETTER RECEIVED			
5/16/2011	09:30AM	JURY TRIAL	RESCHEDULE EVENT	PERRY BRANNEN, JR.	
4/7/2011		MEMORANDUM			MEMO IN SUPPORT OF LETTER TO OBTAIN MISSING DISCOVERY-FILED BY DEF/
4/7/2011		SEALED DOCUMENT			

3/11/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
2/22/2011	12:00PM	PRETRIAL HEARING		PERRY BRANNEN, JR.	
2/4/2011		STATE'S DISCOVERY DISCLOSURE			
1/27/2011		CERTIFIED MAIL RECEIPT			
1/21/2011		CONSOLIDATED MOTIONS PACKAGE			
1/19/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
1/10/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
1/3/2011	12:00PM	PRETRIAL HEARING	RESCHEDULE EVENT	PERRY BRANNEN, JR.	
12/30/2010		TRANSCRIPT RECEIVED			PRELIMINARY HEARING 10-6-10/
12/28/2010		MEMORANDUM			
12/27/2010		PRO SE LETTER RECEIVED	MOOT		
12/6/2010	10:00AM	CALENDAR CALL		PERRY BRANNEN, JR.	
12/3/2010		CORRESPONDENCE			FROM JUDGE OFFICE-RETURNING PRO SE LETTER-DEF REPRESENTED BY COUNSEL/
12/3/2010		BOND ORDER			DENIED/
12/2/2010		PRO SE LETTER RECEIVED			
11/29/2010		CORRESPONDENCE			FROM JUDGE OFFICE RETURNING SPEEDING TRIAL PRO SE LETTER-DEF REPRESENTED BY COUNSEL/
11/22/2010		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
11/19/2010		CORRESPONDENCE			FROM BRANNEN OFFICE/
11/17/2010		PRO SE LETTER RECEIVED			
11/16/2010		PETITION FOR BOND/NISI			
11/15/2010		BENCH WARRANT EXECUTED			
11/5/2010		BENCH WARRANT ISSUED			
11/4/2010		ENTRY OF APPEARANCE			TODD MARTIN/
11/3/2010 4:23:31 PM		SCREENING			Initial Case Screening / Scanning
11/3/2010		INDICTMENT			

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